

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:

ALEX AND ANI, LLC, *et al.*,<sup>1</sup>

Debtors.

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Chapter 11

Case No. 21-10918 (CTG)

(Jointly Administered)

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**SECOND SUPPLEMENTAL DECLARATION OF  
JOSHUA A. SUSSBERG IN SUPPORT OF THE DEBTORS’  
APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING  
THE RETENTION AND EMPLOYMENT OF KIRKLAND & ELLIS LLP  
AND KIRKLAND & ELLIS INTERNATIONAL LLP AS ATTORNEYS FOR  
THE DEBTORS AND DEBTORS IN POSSESSION EFFECTIVE AS OF JUNE 9, 2021**

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I, Joshua A. Sussberg, being duly sworn, state the following under penalty of perjury:

1. I am the president of Joshua A. Sussberg, P.C., a partner of the law firm of Kirkland & Ellis LLP, located at 601 Lexington Avenue, New York, New York 10022, and a partner of Kirkland & Ellis International, LLP (together with Kirkland & Ellis LLP, collectively, “Kirkland”). I am one of the lead attorneys from Kirkland working on the above-captioned chapter 11 cases. I am a member in good standing of the Bar of the State of New York, and I have been admitted to practice in New York State Court, and I have been admitted *pro hac vice* in the United States Bankruptcy Court for the District of Delaware. There are no disciplinary proceedings pending against me.

2. On June 9, 2021, each of the above-captioned debtors and debtors in possession filed a petition in the United States Bankruptcy Court for the District of Delaware under chapter 11

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each of the Debtors’ respective federal tax identification numbers, are as follows: Alex and Ani, LLC (8360); A and A Shareholding, Co., LLC (7939 ); Alex and Ani International, LLC (2247); Alex and Ani Retail, LLC (1227); Alex and Ani Assembly, LLC (3215); Alex and Ani California, LLC (6368); Alex and Ani Canada, LLC (3317); Alex and Ani Puerto Rico, LLC (1477); and Alex and Ani South Seas, LLC (8592). The Debtors’ headquarters and mailing address is: 10 Briggs Drive, East Greenwich, RI 02818.

of title 11 of the United States Code. On June 28, 2021, the Debtors filed the *Debtors' Application for Entry of an Order Authorizing the Retention and Employment of Kirkland & Ellis LLP and Kirkland & Ellis International LLP as Attorneys for the Debtors and Debtors in Possession Effective as of June 9, 2021* [Docket No. 130] (the "Application")<sup>2</sup> pursuant to sections 327(a) and 330 of the Bankruptcy Code, rules 2014(a) and 2016 of the Bankruptcy Rules, and the Local Rules.

3. In support of the Application, the Debtors filed the *Declaration of Joshua A. Sussberg in Support of the Debtors' Application for Entry of an Order Authorizing the Retention and Employment of Kirkland & Ellis LLP and Kirkland & Ellis International LLP as Attorneys for the Debtors and Debtors in Possession Effective as of June 9, 2021*, which was attached to the Application as Exhibit B [Docket No. 130, Ex. B.] (the "Original Declaration"). On July 15, 2021, the Debtors filed the *Supplemental Declaration of Joshua A. Sussberg in Support of the Debtors' Application for Entry of an Order Authorizing the Retention and Employment of Kirkland & Ellis LLP and Kirkland & Ellis International LLP as Attorneys for the Debtors and Debtors in Possession Effective as of June 9, 2021* [Docket No. 203] (the "First Supplemental Declaration," and together with the Original Declaration, the "Prior Declarations"). On July 15, 2021, the Court entered the *Order Authorizing the Retention and Employment of Kirkland & Ellis LLP and Kirkland & Ellis International LLP as Attorneys for the Debtors and Debtors in Possession Effective as of June 9, 2021* [Docket No. 209].

4. I submit this supplemental declaration (this "Second Supplemental Declaration") to supplement the disclosures set forth in the Prior Declarations in accordance with Bankruptcy Rules 2014(a) and 2016(b). Except as otherwise indicated herein, all facts stated in this Second Supplemental Declaration are based on my personal knowledge of Kirkland's operations and

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Application.

finances, information learned from my review of relevant documents, and information supplied to me by Kirkland's partners or employees. If called upon to testify, I could and would testify on that basis.

### **Additional Disclosures**

5. As set forth in the Prior Declarations and herein, Kirkland may in the past have represented, currently may represent, and may in the future represent certain of the Debtors' creditors, equity security holders, or other parties in interest in ongoing matters unrelated to the Debtors and these chapter 11 cases. None of the representations described herein or set forth on **Schedule 2** are materially adverse to the interests of the Debtors' estates. Moreover, pursuant to section 327(c) of the Bankruptcy Code, Kirkland is not disqualified from acting as the Debtors' counsel merely because it represents certain of the Debtors' creditors, equity security holders, or other parties in interest in matters unrelated to these chapter 11 cases.

6. Kirkland has searched its electronic database of representations for connections to parties in interest in these chapter 11 cases. Certain connections were disclosed in the Prior Declarations. In addition to the entities searched and disclosed in the Prior Declarations, Kirkland has searched its electronic database for the entities listed on **Schedule 1**, attached hereto. Kirkland will update its disclosures as necessary and when Kirkland becomes aware of material information. The following is a list of the additional categories that Kirkland has searched:<sup>3</sup>

<b><u>Schedule</u></b>	<b><u>Category</u></b>
1(a)	Contract Counterparties
1(b)	Notices of Appearance/Pro Hac Vices
1(c)	Ordinary Course Professionals
1(d)	Sale Parties
1(e)	Taxing Authorities

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<sup>3</sup> Kirkland's inclusion of parties in the following schedules is solely to illustrate Kirkland's conflict search process and is not an admission that any party has a valid claim against the Debtors or that any party properly belongs in the schedules or has a claim or legal relationship to the Debtors of the nature described in the schedules.

## 1(f) Vendors

7. I have included the results of Kirkland's conflicts searches of the above-listed entities on **Schedule 2** to this Second Supplemental Declaration.<sup>4</sup> In addition, Kirkland re-ran searches in its electronic database for the entities that were previously reviewed in the Prior Declarations. The entities that were re-ran are listed on **Schedule 3**. All current and prior representations of the parties identified on **Schedules 2** and **3** are in matters unrelated to the Debtors and these chapter 11 cases.

8. The Debtors are parties to non-disclosure agreements with certain potential bidders (the "**Confidential Parties**") that contractually obligate the Debtors to maintain the confidentiality of the identities of the Confidential Parties. Due to the potential for litigation and remedies that the Confidential Parties may be entitled to seek if the Debtors breach the non-disclosure agreements, it is imperative that the identities of the Confidential Parties remain confidential. The Debtors will disclose to the U.S. Trustee and counsel to the Committee the identities of the Confidential Parties and Kirkland's connections to such Confidential Parties (including whether such parties are current clients on wholly unrelated matters), and Kirkland believes such disclosure is sufficient and reasonable under the circumstances and at this time. The Debtors are also filing under seal a version of this Declaration that contains a schedule of the Confidential Parties and Kirkland's connections to such Confidential Parties. For the avoidance of doubt, Kirkland has not

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<sup>4</sup> As referenced in **Schedule 2**, the term "current client" means an entity listed as a client in Kirkland's conflicts search system to whom time was posted in the 12 months preceding the Petition Date. As referenced in **Schedule 2**, the term "former client" means an entity listed as a client in Kirkland's conflicts search system to whom time was posted between 12 and 36 months preceding the Petition Date. As referenced in **Schedule 2**, the term "closed client" means an entity listed as a client in Kirkland's conflicts search system to whom time was posted in the 36 months preceding the Petition Date, but for which the client representation has been closed. Whether an actual client relationship exists can only be determined by reference to the documents governing Kirkland's representation rather than its potential listing in Kirkland's conflicts search system. The list generated from Kirkland's conflicts search system is over-inclusive. As a general matter, Kirkland discloses connections with "former clients" or "closed clients" for whom time was posted in the last 36 months, but does not disclose connections if time was billed more than 36 months before the Petition Date.

and will not represent any of the Confidential Parties in connection with any matter in these chapter 11 cases.

9. One of the Confidential Parties and/or certain of its affiliates were potential bidders for the Debtors' assets. Such Confidential Party and certain of its affiliates are clients of Kirkland and represented more than one percent of Kirkland's fee receipts for the twelve-month period ending on August 31, 2021. Kirkland did not represent such Confidential Party and/or any of its affiliates in connection with the Debtors' chapter 11 cases or in connection with such Confidential Parties' potential bid for the Debtors. I do not believe that any current or former representation of such Confidential Party or its affiliates that are Kirkland clients precludes Kirkland from meeting the disinterestedness standard under the Bankruptcy Code.

10. As disclosed on **Schedule 2**, Kirkland currently represents, and in the past has represented, certain affiliates, subsidiaries, and entities associated with Deloitte (such affiliates, subsidiaries, and entities, collectively "Deloitte"), one of the Debtors' ordinary course professionals. Kirkland's current and prior representations of Deloitte have been in matters unrelated to the Debtors or these chapter 11 cases. Kirkland has not represented, and will not represent, Deloitte in connection with any matter in these chapter 11 cases during the pendency of these chapter 11 cases. I do not believe that Kirkland's current or prior representation of Deloitte precludes Kirkland from meeting the disinterestedness standard under the Bankruptcy Code.

11. Based on the conflicts searches conducted to date and described in this Second Supplemental Declaration and the Prior Declarations, to the best of my knowledge and insofar as I have been able to ascertain, neither Kirkland nor any of its partners or associates has any connection with the Debtors or any party in interest in the chapter 11 cases except as disclosed or otherwise described in this Second Supplemental Declaration and in the Prior Declarations.

12. Generally, it is Kirkland's policy to disclose entities in the capacity that they first appear in a conflicts search. For example, if an entity already has been disclosed in the Prior Declarations in one capacity (*e.g.*, a customer), and the entity appears in a subsequent conflicts search in a different capacity (*e.g.*, a vendor), Kirkland does not disclose the same entity again in supplemental declarations, unless the circumstances are such in the latter capacity that additional disclosure is required.

**Affirmative Statement of Disinterestedness**

13. Based on the conflicts search conducted to date and described herein, to the best of my knowledge and insofar as I have been able to ascertain, (a) Kirkland is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code, as required by section 327(a) of the Bankruptcy Code, and does not hold or represent an interest adverse to the Debtors' estates, and (b) Kirkland has no connection to the Debtors, their creditors, or other parties in interest, except as may be disclosed herein.

*[Remainder of page intentionally left blank]*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: September 9, 2021

Respectfully submitted,

/s/ Joshua A. Sussberg

Joshua A. Sussberg  
as President of Joshua A. Sussberg, P.C., as  
Partner of Kirkland & Ellis LLP; and as Partner  
of Kirkland & Ellis International LLP

## **SCHEDULE 1**

### **List of Schedules**

<b><u>Schedule</u></b>	<b><u>Category</u></b>
1(a)	Contract Counterparties
1(b)	Notices of Appearance/Pro Hac Vices
1(c)	Ordinary Course Professionals
1(d)	Sale Parties
1(e)	Taxing Authorities
1(f)	Vendors



**SCHEDULE 1(a)**

**Contract Counterparties**

Collegiate Licensing Co. LLC  
Forbes Co., The  
Howard, Jaime  
Life Insurance Co. of North America  
Macerich Co., The  
MLB Advanced Media LP  
Person, Shannon  
Simon Property Group Inc.  
TM Partridge Creek Mall LP  
Trademark Property Co.  
TVO Mall Owner LLC  
Universal Studios Licensing LLC  
Witsen, Kelly

## **SCHEDULE 1(b)**

### **Notices of Appearance/Pro Hac Vice**

Bowie Central Appraisal District  
Brookfield Properties Retail Inc.  
Forbes Co., The  
Fort Bend, County of (TX)  
Galveston, County of (TX)  
Grapevine, City of (TX)  
Grapevine-Colleyville Independent School District  
Harris, County of (TX)  
Hays, County of (TX)  
LC A&A Holdings Inc.  
LC A&A Intermediate Investors LLC  
Macerich Co., The  
Montgomery, County of (TX)  
Plaza del Caribe SE  
Plaza las Americas Inc.  
PREIT Services LLC  
Simon Property Group Inc.  
Wilmington Trust NA

## **SCHEDULE 1(c)**

### **Ordinary Course Professionals**

Adler Pollock Sheehan PC  
Anand & Anand  
Blum Shapiro & Co. PC  
Bodman PLC  
Casner Edwards LLP  
Chestnut Cambronne Attorneys at Law  
Cohen Cleary PC  
CPA Global Ltd.  
CT Corp. Systems  
Deloitte Touche Tohmatsu LLC  
Gowling WLG Canada LLP  
Hausfeld LLP  
Humprey, Dick  
KPMG LLP  
Law Offices of F. Bryan Brice, Jr.  
Sax LLP  
Zumpano Patricios & Popok PLLC

**SCHEDULE 1(d)**

**Sale Parties**

[CONFIDENTIAL]

## **SCHEDULE 1(e)**

### **Taxing Authorities**

Brooklyn, Village of (IL)  
Clear Creek ISD (TX), Tax Office  
Davidson, County of (NC), County Clerk  
Delaware, State of, Secretary of State  
Greater Westfield Area Chamber of Commerce  
Hillsborough, County of (FL), Tax Collector  
Knoxville, City of (TN)  
Macomb, County of (MI), Treasurer  
Natick, Town of (MA)  
New Jersey, State of  
New York, City of (NY), Department of Finance, Finance Commissioner  
Ohio, State of, Attorney General  
San Juan, Municipality of (Puerto Rico)  
Sarasota, City of (FL)  
Southampton Chamber of Commerce Inc.  
Washington, State of

## **SCHEDULE 1(f)**

### **Vendors**

A Day for Children	Global Facility Management & Construction
Abbott-Action Inc.	Inc.
Advanced Security Group Inc.	Graficas Corona Je SA De CV
African American Women in Cinema	Grand Council Ladies Oriental Shrine of
Aid Our Veterans	North America Foundation
Aisiling & Olivia Fun Run	H2O Toronto
Alianza Laura Aponte Para La Paz Social	Halo Dance 4 Autism Foundation
Inc.	Handy Foundation, The
Allied Fire Protection Inspection Services	Hoffman Elite Enterprises Ltd.
Inc.	International Systems of America LLC
American Red Cross	Jacobacci & Partners SA
Ars Networking	Jamie Leigh Jones Foundation for Dual
Avon 39	Diagnosis of Chronic Illness
Bambora	Junior League of Pittsburgh
Bce Business Services LLC	Just Speak Inc.
Boteon, Juliana	King of Prussia Associates Inc.
Caesura Youth Orchestra	King of Prussia Business Improvement
Canadian Network of Women's Shelters &	District
Transition Houses	Labs for Liberty
Capron Park Zoo	Lending Hearts & Hands Inc.
Central Maine Power Co.	Leukemia & Lymphoma Society
Centros Sor Isolina Ferrer	Leukemia & Lymphoma Society, The
Certified Retail Solutions	Lighten Creative Marketing Group
ChemArt Co.	Little Falls Media LLC
Cherry Hill Board of Education	LogMeIn Inc.
Ching Farm Rescue	Lyncrest Elementary School PTO
D. Augustus Straker Bar Association	Macomb Community Drug Courts Inc.
Dancing Saved My Life	Maine Cancer Foundation
Destination Dino Liam Inc.	Massachusetts Veterinary Medical
Dress for Success Greater Orlando	Association Stray Animal Fund Inc.
Duquesne University Delta Zeta Society	Mcdonald Hopkins LLC
Durga Tree International	Miller Advertising Agency Inc.
Eaglethon at American University	Mr. Rooter Plumbing of Delaware &
East Providence High School Band	Salisbury
Endicia	NAMI Sacramento
Estrada, George	New England Environmental & Consulting
Expivi Inc.	Northeast High School
Familes for Encore Entries	Northeast Trailer Remarketing Corp.
Freehold, Town of (NJ), Fire Bureau	Nuance Group AG, The
Girl Scouts of Citrus Council Inc.	Ocean State Disposal
Girls Win Inc.	One Entertainment Group LLC
	Operation Buddy Rescue Cats & Kittens

Our Hearts Beat For Scarlett Foundation  
Inc.  
Palm Beach, City (FL), Gardens Business  
Services Division  
Palo Alto, City of (CA), False Alarm  
Reduction Program  
PAWS of Rochester  
Phi Mu Foundation  
Pro Portsmouth Inc.  
Richardson, Sonja  
Rising American Indian Nations  
Rocket Jewelry Box Inc.  
Sage Software Inc.  
Sandgate Womens Shelter of York Region  
Inc.  
Sarasota, County of (FL), Veterans Services,  
Veterans Commission  
Saratoga Regional YMCA  
Sharon Randolph Foundation  
Sigma Sigma Sigma  
Six Consulting LLC  
Smartsheet Inc.  
Somers, Christopher  
South Florida Wildlife Center, The  
Square One Older Adult Centre  
St. Jude Children's Research Hospital Inc.  
St. Louis College of Pharmacy  
Statewide Fire Protection Co.  
Street Angel Project Inc.  
Substantial Brand Ltd Co.  
Ten Lives Club Galleria  
Tragic Is Magic Scholarship Fund  
University of Massachussetts, Trademark &  
Licensing Administration  
University of Pittsburgh  
University of Pittsburgh Law Student Bar  
Association  
V Palm Springs  
Vineland PTA  
Water.Org University of Toronto Chapter  
William Patterson University Cheerleading  
Wilson 150 Worth LLC  
Youth for the Fight  
Zebrafish Labs Inc.

**SCHEDULE 2**

<b>Name of Entity Searched</b>	<b>Name of Entity and/or Affiliate of Entity, that is a K&amp;E Client</b>	<b>Status</b>
American Red Cross	American Red Cross of Greater Chicago	Closed
Confidential	Confidential Confidential Confidential Confidential Confidential Confidential Confidential Confidential Confidential Confidential  Confidential  Confidential Confidential Confidential Confidential Confidential Confidential	Current Former Current Current Current Current Current Current Closed Current  Current  Current Former Current Current Current Current
Confidential	Confidential	Current
Confidential	Confidential Confidential Confidential	Closed Closed Current
Deloitte Touche Tohmatsu LLC	Deloitte Consulting LLP Deloitte LLP Deloitte Tax LLP Deloitte USA LLP	Current Current Current Current
Confidential	Confidential Confidential Confidential Confidential Confidential	Closed Current Current Closed Current



Name of Entity Searched	Name of Entity and/or Affiliate of Entity, that is a K&E Client	Status
	Confidential	Current
	Confidential	Current
	Confidential	Closed
	Confidential	Closed
	Confidential	Current
	Confidential	Current
	Confidential	Current
	Confidential	Current
	Confidential	Current
	Confidential	Current
	Confidential	Current
	Confidential	Current
	Confidential	Current
	Confidential	Current
Confidential	Confidential	Current
Confidential	Confidential	Current
	Confidential	Current
	Confidential	Current
	Confidential	Current
	Confidential	Current
	Confidential	Former
TM Partridge Creek Mall LP	Jones Lang LaSalle Income Property Trust, Inc.	Current
	LaSalle Investment Management / Jones Lang LaSalle Group	Current

**SCHEDULE 3**

<b>Name of Entity Searched</b>	<b>Name of Entity and/or Affiliate of Entity, that is a K&amp;E Client</b>	<b>Status</b>
Ala Moana Center	Oaktree ATI Investors LP	Current
Beachwood Place Mall LLC	Oaktree Power Opportunities Fund IV (Parallel) LP	Current
Brookfield	Oaktree Power Opportunities Fund IV LP	Current
Brookfield Properties Retail Inc.		
Christiana Mall LLC		
Fashion Show Mall LLC		
Glendale Galleria, The		
Glendale Galleria, The		
Glendale I Mall Associates		
Glendale I Mall Associates		
Grand Canal Shops II LLC		
Kenwood Mall LLC		
Kenwood Towne Center		
Mayfair Mall LLC		
Natick Mall LLC		
Oakbrook Shopping Center LLC		
Oakbrook Urban Venture LP		
Perimeter Mall LLC		
Towson Town Center LLC		
Water Tower Joint Venture		
Whalers Village		
WV Sub LLC		
Fermata Partners LLC	TPG Global Infrastructure Partners LP	Current
LogMeIn Inc.	Concorde Midco Limited	Current
PayFactors Group LLC		
New England Label Inc.	Resource Label Group LLC	Current
	RLG Parent L.P.	Current
Special Olympics Inc.	Special Olympics Massachusetts	Current
Xcellence Inc.	GI Valet Acquisition Inc.	Current
	GI Valet Parent Inc.	Current
	GI Valet Topco LP	Current
	Travis R. Pearson	Current